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Report of the Chair of the Legal and Technical Commission on the work of the Commission at its twenty-fourth session

Overview of existing measures, means and actions relating to the protection and conservation of the marine environment in areas beyond national jurisdiction

Submitted by the delegation of the Netherlands

I. Introduction

1. In accordance with article 165 of the United Nations Convention on the Law of the Sea, and as an organ of the Council of the International Seabed Authority, the Legal and Technical Commission is charged, inter alia, with reviewing applications for plans of work. That task is also specified under regulation 21 of the regulations on prospecting and exploration for polymetallic nodules in the Area, regulation 23 of the regulations on prospecting and exploration for polymetallic sulphides in the Area and regulation 23 of the regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area. As part of that consideration, the Commission must determine whether, among other things, the proposed plan of work for exploration will provide for the effective protection and preservation of the marine environment including, but not restricted to, the impact on biodiversity (see, for example, regulation 21, para. 4 (b) of the regulations related to polymetallic nodules).

2. Similarly, in the Draft Regulations on Exploitation of Mineral Resources in the Area, the Commission will be required to consider applications of a plan of work for exploitation (see ISBA/24/LTC/WP.1, part II, sect. 3 and part IV). As part of its consideration, the Commission will need to determine whether the proposed plan of work for exploitation provides for the effective protection of the marine environment from harmful effects in accordance with article 145 of the Convention, including the application of best environmental practices and a precautionary approach.

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II. Reason for submitting

3. At the twenty-third session of the International Seabed Authority in August 2017, it was brought to the attention of the Council that an application for a plan of work for exploration included an area that had been described as an ecologically or biologically significant marine area under the Convention on Biological Diversity.

4. In considering whether a proposed plan of work for exploration or exploitation will provide for the effective protection and preservation of the marine environment, the Commission will need to be able to make a holistic and integrated assessment. That requires the Commission, among other things, to effectively oversee the different human activities taking place in areas beyond national jurisdiction as well as any existing measures, means and actions relating to the protection and conservation of the marine environment that are in place in those areas, in particular with regard to the area under consideration in an application for the approval of a plan of work.

III. Objective

5. The present paper provides an overview of existing measures, means and actions relating to the protection and conservation of the marine environment in areas beyond national jurisdiction as of March 2018 (see annex). That includes the Area as well as the high seas (see articles 1 (1) and 86 of the Convention). The measures, means and actions emanate from competent international organizations/arrangements.

6. The information on existing measures, means and actions relating to the protection and conservation of the marine environment in areas beyond national jurisdiction should be part of the Commission's determination as to whether the proposed plan of work for exploration (and future exploitation) provides for the effective protection and preservation of the marine environment, which includes, but is not restricted to, the impact on biodiversity.

IV. Recommendations

7. The Council is invited to take note of the overview and to request the Commission to use the information provided by the overview, as appropriate, when considering an application for the approval for a plan of work for exploration (and future exploitation).

8. The Council is also invited to request the secretariat to regularly update the overview of existing measures, means and actions relating to the protection and conservation of the marine environment in areas beyond national jurisdiction.

Annex

Overview of existing measures, means and actions relating to the protection and conservation of the marine environment in areas beyond national jurisdiction, as of March 2018[1]

The present annex contains the following information:

- The originator (competent international organization/arrangement) of those measures, means and actions
- A list of existing measures, means and actions applicable in areas beyond national jurisdiction that relate to the protection and conservation of the marine environment and a brief description of the content of those measures, means and actions
- A description of the geographical location of the area where measures, means and action are applicable/intended to be applied/implemented

Organization/convention/agreement	*Measures, means and actions in areas beyond national jurisdiction*	*Locations*
International Seabed Authority	*Areas of particular environmental interest* The operational objectives for the areas of particular environmental interest are to: (a) Protect biodiversity and ecosystem structure and function through a system of representative sea floor areas closed to mining activities. The system must be in place before additional mining claims further compromise the ability to develop a scientifically robust design; (b) Include a wide range of the habitat types present in the Clarion-Clipperton Fracture Zone within the areas of particular environmental interest (for example seamounts and fracture zone structures); (c) Establish an "area of particular environmental interest" system to avoid overlap with the current distribution of claimant and reserve areas (as was the basis for the current scientific design); (d) Provide a degree of certainty to existing and prospective contractors by laying out the location of areas closed to mining activities.[a] 9 areas are designated as areas of particular environmental interest.	Central Pacific, Clarion-Clipperton Fracture Zone

[1] The table is intended to provide an up-to-date and complete overview as of March 2018. Mistakes or omissions may occur.

Organization/convention/agreement	*Measures, means and actions in areas beyond national jurisdiction*	*Locations*
International Maritime Organization (IMO)	*Particularly Sensitive Sea Areas* A Particularly Sensitive Sea Area is an area that needs special protection through action by IMO because of its significance for recognized ecological, socioeconomic or scientific attributes, where such attributes may be vulnerable to damage by international shipping activities. At the time of the designation of a Particularly Sensitive Sea Area, an associated protective measure, which meets the requirements of the appropriate legal instrument establishing such measure, must have been approved or adopted by IMO to prevent, reduce or eliminate the threat or identified vulnerability. No Particularly Sensitive Sea Area has been designated in areas beyond national jurisdiction.	
	Special Areas Special Areas are defined under annexes I, II, IV and V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL), as sea areas where, for recognized technical reasons in relation to their oceanographical and ecological conditions and to the particular character of their sea traffic, the adoption of special mandatory methods for the prevention of pollution of the sea from ships by oil, sewage or garbage, as applicable, is required. 2 Special Areas are designated for the prevention of sea pollution.	Mediterranean and the seas around Antarctica
	Emission control areas Emission control areas are defined under annex VI of MARPOL as areas where the adoption of special mandatory measures to regulate emissions from ships is required to prevent, reduce and control air pollution from nitrogen oxides and/or sulphur oxides and/or particulate matter and their attendant adverse impacts on human health and the environment. No emission control areas have been designated in areas beyond national jurisdiction.	
	Areas to be avoided Under the International Convention for the Safety of Life at Sea, ships' routing systems are identified as contributing to the safety of life at sea, safety and efficiency of navigation and/or the protection of the marine environment. No areas to be avoided have been established in areas beyond national jurisdiction.	

Organization/convention/agreement	*Measures, means and actions in areas beyond national jurisdiction*	*Locations*
Regional fisheries management organizations[b]	*Areas with restrictions* include: • *Depth* restrictions, which generally prohibit bottom-fishing activities beyond a certain depth in the area. • Technical restrictions, which include the prohibition of specific gear. • Seasonal restrictions, which prohibit fishery activities during parts of the year. • Footprint restrictions, which prohibit bottom fishing outside established areas without a prior impact assessment and the consent of regional fisheries management organizations (generally implemented by an exploratory fishing protocol). • Areas closed to all, or to a specific type, of fishery activity. Those areas are closed to fisheries because they are known vulnerable marine ecosystems, or there is good reason to suspect them to be vulnerable marine ecosystems. They may also include areas that are important breeding grounds for fish. • *Areas where catches are frozen or seasonally restricted*. In those areas, fishery activities are not prohibited, but catches are regulated so as not to exceed the levels of an average of a certain number of prior years, or fishery activities may be restricted during certain parts of the year. It may also include a "move-on" rule as a safeguard to prevent significant adverse impacts in areas where fishing is allowed, obliging vessels to move a number of nautical miles when the number of vulnerable marine ecosystem indicator species caught passes a specific threshold. 8 regional fisheries management organizations regulate non-highly migratory species. In total, some 50 to 60 specific areas have restrictions.	Mediterranean, North-west Atlantic, North-east Atlantic, South-east Atlantic, North Pacific, South Pacific, Southern Indian Ocean, Southern Ocean
Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR)	*Marine protected areas under OSPAR* The seabed and/or the subsoil and/or the water column are protected collectively by all OSPAR contracting parties. 7 marine protected areas are designated under OSPAR.	North-east Atlantic

Organization/convention/agreement	*Measures, means and actions in areas beyond national jurisdiction*	*Locations*
Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention)	*Specially protected areas of Mediterranean interest* Specially protected areas of Mediterranean interest are intended to safeguard representative types of coastal and marine ecosystems, endangered habitats and habitats critical to the survival of endangered species. 1 specially protected area of Mediterranean interest is designated under the Barcelona Convention.	Mediterranean
Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea Convention)	*Marine and terrestrial marine protected areas* No measures in areas beyond national jurisdiction under the Noumea Convention (South Pacific)	
Antarctic Treaty	*Antarctic specially protected areas (marine or partly marine)* Antarctic specially protected areas can be designated to protect outstanding environmental, scientific, historic, aesthetic or wilderness values. Parties to the Treaty are encouraged to identify and to include as Antarctic specially protected areas those areas that need to be kept safe from human interference, are representative of major ecosystems, are unique, are of particular scientific interest, have outstanding geological features and/or are of natural and historical value.[c] Entry to an Antarctic specially protected area requires a permit. 11 Antarctic specially protected areas (2 fully and 9 partly marine areas) are designated under the Antarctic Treaty.	Seas around Antarctica
	Antarctic Specially Managed Areas (partly marine) Antarctic Specially Managed Areas can be designated in order to assist in the planning and coordination of activities, avoid possible conflicts, improve cooperation between the parties or to minimize environmental impacts.[d] Antarctic Specially Managed Areas can be areas where activities may interfere with each other or cause important cumulative environmental impacts, and areas with sites or monuments of historic value. Entry to an Antarctic Specially Managed Area does not require a permit. An Antarctic Specially Managed Area may contain within its area one or more Antarctic specially protected areas. Currently there are two designated Antarctic Specially Managed Areas which are partly marine.[e] 2 Antarctic Specially Managed Areas (partly marine) are designated under the Antarctic Treaty.	Seas around Antarctica

Organization/convention/agreement	*Measures, means and actions in areas beyond national jurisdiction*	*Locations*
Convention on Biological Diversity	*Ecologically or biologically significant marine areas* Ecologically or biologically significant marine areas are intended as an inventory of areas for which States are encouraged to, collectively and by cooperation, identify and adopt measures to enhance conservation and sustainable use. Such a designation does not put a legal obligation on States to protect. A public repository of ecologically or biologically significant marine areas resulting from the regional workshops, showing their geographical location, has been developed by the Convention on Biological Diversity.[f]	Large ecologically or biologically significant marine areas have been identified in areas beyond national jurisdiction, most notably in the North and Central Pacific, the North-west Atlantic, the Central Atlantic and the Southern Indian Ocean
Voluntary and unilateral initiatives	13 areas voluntarily closed by fishing industry group Southern Indian Ocean Deepwater Fisheries Association (SIODFA) in the Southern Indian Ocean	Southern Indian Ocean
	European Union/Spain unilateral closure of bottom fishing in the South-west Atlantic (not covered by regional fisheries management organizations)	South-west Atlantic
	Sargasso Sea Commission, voluntary measures by Bermuda, eight other countries, non-governmental organizations and private donors	Sargasso Sea

[a] See also ISBA/17/LTC/7, para. 39.
[b] Includes the Commission for the Conservation of Antarctic Marine Living Resources.
[c] Protocol on Environmental Protection to the Antarctic Treaty, annex V, art. 3.
[d] Ibid., art. 4.
[e] Antarctic Specially Managed Area 3, Cape Denison, Commonwealth Bay, George V Land, East Antarctica, has been de-designated by the secretariat of the Antarctic Treaty. See www.ats.aq/devPH/apa/ep_protected_detail.aspx?type=3&id=76&lang=e.
[f] See www.cbd.int/ebsa/.